UNPUBLISHED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN-WATERLOO DIVISION

ROOSEVELT MATLOCK, Plaintiff, vs. THOMAS VILSACK, BLACK HAWK COUNTY, and ANY AND ALL UNNAMED PARTIES, Defendants.	No. C04-2016-MWB **REPORT AND RECOMMENDATION ON MOTIONS TO DISMISS**

This matter is before the court on motions to dismiss filed by the defendant Black Hawk County (the "County") (Doc. No. 16, filed 06/24/04), and the defendant Thomas Vilsack ("Vilsack") (Doc. No. 20, filed 06/25/04). By order dated June 15, 2004, this matter was referred to the undersigned United States Magistrate Judge for the issuance of a report and recommended disposition.

I. FACTUAL AND PROCEDURAL BACKGROUND

Currently confined at the Iowa State Penitentiary in Fort Madison, Iowa, the plaintiff Roosevelt Matlock ("Matlock") submitted a Complaint under 42 U.S.C. § 1983 to redress the alleged deprivation of his rights. (Doc. No. 7)

In his Complaint, Matlock states:

> I served one year and two months for a conviction that I was found innocent of. This conviction was overturned as a wrongful conviction, by the Iowa Supreme Court.

(Doc. No. 1-2, § V) Matlock claims this experience resulted in emotional and mental anguish and unnecessary stress. (*Id.*) In his prayer for relief, Matlock seeks $2,000,000 in damages for mental anguish, $2,000,000 in damages for emotional trauma, $1,500,000 for wrongful imprisonment; and $500,000 "or whatever the court's deem app[ropriate]" for malicious prosecution. (*Id.*, § VI)

In his statement of additional facts, Matlock states:

> Black Hawk County wrongfully sent me to prison for this case no. LACV083437 in 2000. And Iowa [Supreme] Court over[]turned the case no. 012066 the last of 2002. . . . The judge and jury in 2000 wrongfully convicted and imprisoned me, case no. LACV083437. . . . They violated my constitutional rights by imprisoning me for a crime that it takes an [overt] act for called sexual [predator] and I had not. And Iowa [Supreme] Court over[]turned the case and taged [sic] it's case no. 012066 after I had been wrongfully imprisoned from the time of 2000 till 2003. I'm asking for $200.00 a day plus ten million for mental damages.

(Doc. No. 5)

Matlock refers to a state court case, number LACV083474, in his Complaint and additional statement of facts. Although Matlock states the judge and jury wrongfully convicted and imprisoned him for a crime he did not commit, the state court case concerned civil commitment proceedings under Iowa Code Chapter 229A, Commitment of Sexually Violent Predators. *See In Re Matlock*, LACV083487 (Black Hawk County Dist. Ct. 2001). *See also In Re Matlock*, 662 N.W.2d 373 (Table), 2003 Iowa App. LEXIS 107, 2003 WL 288999 (Iowa Ct. App. 2003). In those proceedings, the State petitioned to have Matlock declared to be a sexually violent predator. *Id.* A jury found

him to be a sexually violent predator, and he was civilly committed. *Id*. On February 12, 2003, the Iowa Court of Appeals reversed the commitment order and remanded the case to the district court for dismissal of the petition. *Id*. Procedendo issued March 14, 2003. *Id*.

In its motion to dismiss, the County argues: 1) Matlock's Complaint fails to state a claim upon which relief can be granted because the County is not a proper party; 2) even if the County were a proper party, the state actors are entitled to either absolute immunity or qualified immunity; and 3) Matlock is not entitled to rely on a *respondeat superior* theory. (*See* Doc. No. 16). The defendant seeks dismissal pursuant to 28 U.S.C. § 1915(e)(2)(B). *Id*.

In Vilsack's motion to dismiss, he argues: 1) Matlock's Complaint fails to state a claim upon which relief can be granted because he did not make any allegations against or involving Vilsack; 2) Matlock's claim against Vilsack must be dismissed because neither the State nor a state official is a "person" susceptible to suit under 42 U.S.C. § 1983; 3) Vilsack would be immune from suit for any tort action brought under state law; and 4) even if the court had jurisdiction over state tort claims, any such claim would be precluded by Iowa Code Chapter 669. (*See* Doc. No. 20). Vilsack seeks dismissal pursuant to Federal Rule of Civil Procedure 12(b)(6). *Id*.

Matlock's resistance to the County's motion to dismiss was due on July 1, 2004, and his resistance to Vilsack's motion to dismiss was due on July 12, 2004. On July 12, 2004, Matlock filed a motion for extension of time to resist the County's motion. (Doc. No. 22). On July 13, 2004, the court granted the motion and ordered Matlock to file separate resistances to the pending motions to dismiss by August 12, 2004. (Doc. No. 23). On August 6, 2004, Matlock's attorney filed a motion for a further extension of time to

allow Matlock to file a *pro se* resistance to the pending motions to dismiss. (Doc. No. 24).

In support of the motion, counsel stated, in relevant part, as follows:

> 1. That Plaintiff's underlying claim against the Defendants is based upon the Iowa Court of Appeals decision of February 12, 2004 reversing Plaintiff's civil commitment under Iowa Code Chapter 229A after he spend [sic] approximately 3 years confined in the sexual preditor's [sic] [unit] after he discharged his theft conviction.
>
> 2. Iowa Code Section . . . 663A.6 provides for liquidated damages of $50.00 per day up to $25,000.00 per year for time spent confined in a prison following a criminal conviction. Counsel can find no similar provision that [applies] as a result of a wrongful civil commitment. If a right exists for compensation under Iowa law, it would appear to be a State remedy and not based on a federal civil right.
>
> 3. With regard to the current Defendants, there is no cause of action against the governor or the county under 42 U.S.C. Section 1983. Section 1983 requires that the defendants be sued in their individual capacities. Plaintiff may not maintain a cause of action against the current defendants as they [are] not proper parties that were associated with the alleged actions nor is there an allegation of a custom or practice against them.
>
> 4. That with regard to the potential "state actors", the presiding (or committing judge) and the prosecutor responsible for prosecuting the Iowa Code Chapter 229A proceeding are both protected under the doctrine of absolute immunity.
>
> 5. That other potential actors would appear to be protected under qualified immunity as the law was not clearly developed until after Plaintiff's case was decided by the Iowa Court of Appeals.
>
> 6. That counsel is unable to re-plead or respond to the motion to dismiss to conform with Federal Rule of Civil Procedure 11 at this time.

> 7. That Plaintiff does not wish to dismiss his case and desires the opportunity to make a pro se argument to the court in resistance to the pending motion[s].

Id.

On August 9, 2004, the court granted Matlock's motion for extension of time, and ordered him to file a *pro se* resistance by September 16, 2004. (Doc. No. 25). On September 16, 2004, Matlock filed a document entitled "Amendment/Resistance 'To Defendant's Motion to Dismiss.'" (Doc. No. 27). Matlock seeks to amend his Complaint to add "John/Jane Doe" as additional defendants, "in order to preserve his cause of action while attempting to identify the defendant or defendants." (*Id.*, ¶ 2, citing *DePugh v. Penning*, 888 F. Supp. 2d 959 (N.D. Iowa 1995) (Bennet, J.)). He further seeks to add claims for malicious prosecution and abuse of process. (*Id.*, ¶ 3, citing *Sarvold v. Dodson*, 237 N.W.2d 447 (1976)).

Matlock then argues as follows

> Wherefore, I hope the Court understands that because I do not know whether or not counsel is on the same path as I am, it's best that I do not say too much until I'm able to consult with counsel, or new counsel, if it becomes necessary to request appointment of different representation. Put simply, although I loath airing dirty laundry, counsel wrote to me expressing that "he -- could not find any law that would allow me to make a § 1983 complaint for illegal or unlawful restraint under a civil custody," i.e., that such could only be done if the illegal custody was under a criminal cause of action. Of course, [*Sarvold*] disproves that mistaken information. Counsel also expressed that "he -- could not see how I could take § 1983 against the present defendants." Naturally, DePugh disproves that erroneous concept. Wherefrom [sic], admittedly, counsel may well have been unaware of these other available options[;]

> thus, we, more likely than not, will be able to get on the same track, and work-out the mis-communication issue.
>
> But, since the upcoming deadline is so close, I cannot take the chance -- unknowingly -- that counsel has found the same footing. To so do would be stupid of me, notwithstanding the fact that counsel should have contacted me by now -- thus, if he holds to his last letter, coupled with what I have discovered on my own, the Court should be well aware that appointment of new counsel -- is more than necessary.
>
> Accordingly, since to date I have no idea what counsel is thinking or planning on filing, nor do I have time to wait until the last instance[,] thus depriving myself of the necessary option to Amend-and-Resist, I have to defend-and-protect my cause of action -- now!!
>
> Therefore, I pray the Court will give my on-point case law authorities serious consideration and, if counsel files a negative reply, answer or resistance, I further hope the Court will appoint new counsel to represent me in this cause of action because, "I have a genuine issue of material fact, i.e., abuse of process and/or malicious prosecution, and I can claim preservation of my cause of action while attempting to identify the defendant, i.e., John/Jane Doe," if those presently identified are not viable.

(Doc. No. 27; some punctuation omitted).

On October 1, 2004, the County filed a reply to Matlock's resistance, in which the County asserts, in pertinent part:

> 2. [The County] does not contest that a plaintiff may sue "John Doe" defendants under 42 U.S.C. § 1483 [sic] in order to preserve his cause of action while attempting to identify defendants; however, the pending Motions to Dismiss are raised by identified parties and relate to whether Plaintiff has any claim against such parties upon which relief can be granted.

> 3. That, as noted by the decision of the Iowa Court of Appeals in Mr. Matlock's case, entitled *In Re the Detention of Roosevelt Matlock*, No. 2-357/01-1094, filed February 12, 2003, a jury found Mr. Matlock to be a sexually violent predator, and, thereafter, he was civilly committed. Although the Iowa Court of Appeals held that the application of the sexually-violent predator statute was unconstitutionally applied to Mr. Matlock because his most recent confinement had been for a nonsexual offense, the proper application of Iowa Code Chapter 229A was subject to good-faith disagreement at the time of Mr. Matlock's civil commitment. That is, even if Mr. Matlock identifies a suable defendant, there is no required "malice" which would support Mr. Matlock's allegation of malicious prosecution and/or abuse of process. *See Sarvold v. Dodson*, 237 N.W.2d 447, 448 (Iowa 1976) (the case cited by Mr. Matlock).

II. STANDARDS FOR A MOTION TO DISMISS

To establish his claim under 42 U.S.C. § 1983, Matlock must show the defendants' conduct caused a constitutional violation, and the challenged conduct was performed under color of state law. *Reeve v. Oliver*, 41 F.3d 381, 383 (8th Cir. 1994) (citing *Alexander v. Peffer*, 993 F.2d 1348, 1349 (8th Cir. 1993)). *See also West v. Atkins*, 487 U.S. 42, 48, 108 S. Ct. 2250, 2254-55, 101 L. Ed. 2d 40 (1988); *Meyer v. City of Joplin*, 281 F.3d 759, 760-61 (8th Cir. 2002); *Dunham v. Wadley*, 195 F.3d 1007, 1009 (8th Cir. 1999). In considering the defendants' motions to dismiss, the court must assume all the facts alleged in the Complaint are true, and liberally construe the Complaint in the light most favorable to Matlock. *See Coleman v. Watt*, 40 F.3d 255, 258 (8th Cir. 1994) (citing *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S. Ct. 99, 101-02, 2 L. Ed. 2d 80 (1957)); *see also Young v. City of St. Charles*, 244 F.3d 623, 627 (8th Cir. 2001).

In treating the factual allegations of the Complaint as true, the court "do[es] not, however, blindly accept the legal conclusions drawn by the pleader from the facts." *Westcott v. City of Omaha*, 901 F.2d 1486, 1488 (8th Cir. 1990) (citing *Morgan v. Church's Fried Chicken*, 829 F.2d 10, 12 (6th Cir. 1987); and 5 C. Wright & A. Miller, Federal Practice and Procedure § 1357, at 595-97 (1969)); *see also LRL Properties v. Portage Metro Housing Auths.*, 55 F.3d 1097, 1103 (6th Cir. 1995) (the court "need not accept as true legal conclusions or unwarranted factual inferences," quoting *Morgan, supra*). Under Federal Rule of Civil Procedure 12(b)(6), dismissal is appropriate "'only if it is clear that no relief can be granted under any set of facts that could be proved consistent with the allegations.'" *Alexander*, 993 F.2d at 1349 (quoting *Hishon v. King & Spalding*, 467 U.S. 69, 73, 104 S. Ct. 2229, 2232, 81 L. Ed. 2d 59 (1984)); *see also Broadus v. O.K. Indus., Inc.*, 226 F.3d 937, 941 (8th Cir. 2000).

The court will apply these standards to its consideration of the defendants' motions to dismiss.

III. ANALYSIS

As Matlock's appointed counsel indicated in his August 6, 2004, motion for an extension of time, Matlock is unable to pursue a 42 U.S.C. § 1983 action against the named defendants, or any identified but unnamed defendants. In his *pro se* resistance, Matlock did not address the arguments raised by the defendants in their motions to dismiss, nor did he offer any authority that would suggest dismissal of the named defendants from this case would be improper. Matlock's reliance on *DePugh* and *Sarvold* to support the proposition that he should be allowed to pursue his action is misplaced; neither case supports Matlock's argument. Because they are properly supported and essentially unresisted, the defendants' motions to dismiss should be granted. *See* Fed. R. Civ. P.

12(b)(6) (stating dismissal is appropriate when party fails to state a claim upon which relief can be granted); 28 U.S.C. § 1915(e)(2)(B) (same).

Moreover, dismissal of the Complaint is appropriate because Matlock has failed to identify any additional defendants, *see DePugh*, 888 F. Supp. at 965 n.3, and has failed to allege any facts that support his claims, including any malicious prosecution and/or abuse of process claim, *see Sarvold*, 237 N.W.2d at 448. Stated differently, Matlock's Complaint should be dismissed because it fails to state a claim upon which relief can be granted. *See* Fed. R. Civ. P. 12(b)(6); 28 U.S.C. § 1915(e)(2)(B).

IV. CONCLUSION

For the foregoing reasons, **IT IS RECOMMENDED** that, unless any party files objections[1] to the report and recommendation in accordance with 28 U.S.C. § 636(b)(1)(C) and Fed. R. Civ. P. 72(b) within ten (10) days of the service of a copy of this report and recommendation, the defendants' motions to dismiss be granted, and judgment be entered in favor of the defendants and against the plaintiff.

IT IS SO ORDERED.

DATED this 6th day of October, 2004.

PAUL A. ZOSS
MAGISTRATE JUDGE
UNITED STATES DISTRICT COURT

[1] The parties must specify the parts of the report and recommendation to which objections are made. In addition, the parties must specify the parts of the record, including exhibits and transcript lines, which form the basis for such objections. *See* Fed. R. Civ. P. 72. Failure to file timely objections may result in waiver of the right to appeal questions of fact. *See Thomas v. Arn*, 474 U.S. 140, 155, 106 S. Ct. 466, 475, 88 L. Ed. 2d 435 (1985); *Thompson v. Nix*, 897 F.2d 356, 357-58 (8th Cir. 1990).